IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3-9-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.33010 of 2004

and

WPMP No.39921 of 2004

K.P.Sreenivasan .. Petitioner

vs

1.Commissionerate of Municipal
Administration
rep. By its Commissioner
Chepauk, Chennai 600 005.
2.The Vaniyambadi Municipality
rep. By its Commissioner
New Town, Vaniyambadi 635 751. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the second respondent regarding the acquisition of Ramayan thopu lands mentioned in the Notice in Na.ka.5054/2004/T1 dated 10.11.2004 and quash the said notice and further proceedings including the taking possession of lands in pursuance of the notice aforesaid.

For Petitioner : Mr.S.Gnaneswaran
For Respondents : Mr.I.Paranthaman
Additional Government
Pleader for R1
Mr.K.R.Tamizhmani for R2

ORDER

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This writ petition has been brought forth seeking a writ of certiorari to quash the notice issued by the second respondent in Na.ka.5054/2004/T1 dated 10.11.2004.

2.The Court heard the learned Counsel on either side. The affidavit in support of the petition is perused.

3.Chalenge is made to an order of the second respondent dated 10.11.2004, whereby the petitioner was directed to hand over possession of the property mentioned in the impugned notice, within a period of three days from the date of receipt of the notice.

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4.The admitted facts are as follows:

An immovable property having an extent of 3.60 acres, was leased out to the father of the petitioner herein in 1967. The lease was extended then and there upto 1990. Thereafter, there was no extension of lease in the year 1991 which led the original lessee to file a suit in O.S.No.104/91 on the file of the District Munsif, Vaniyambadi, and thereafter, it was transferred to the District Munsif's Court, Tirupattur. In 1992, the original lessee died. Then, the legal representatives of the deceased lessee including the petitioner herein, were added. They pursued the matter. On 13.10.2004, they had not pressed the suit, and thus, the suit came to be disposed of. Thereafter, the petitioner filed O.S.No.283/2004 on the file of the District Munsif, Vaniyambadi, seeking a relief of permanent injunction. Pending that suit, he filed I.A.No.346/2004, wherein he sought for temporary injunction. Both the suit and the temporary injunction application are pending. While the matter stood thus, the impugned notice was served upon the petitioner by the second respondent Municipality calling upon him to vacate and hand over possession of the property within a period of three days. Challenging the same, the instant writ petition has been brought forth.

5.The learned Counsel for the petitioner would submit that while the suit was pending in respect of the very same property, the notice issued by the second respondent, calling upon him to hand over possession within a period of three days and that too, at the time of Deepavali and the holidays namely Saturday and Sunday, that followed, was nothing but illegal, and hence, it has got to be struck down.

6.In answer to the above, it is contended by the learned Counsel for the second respondent Municipality that the lease was not extended from 1991; that the earlier suit filed by the original lessee and subsequently prosecuted by the petitioner and the other legal representatives of the deceased lessee, was not pressed, and thus, it has reached finality; that thereafter, the petitioner filed O.S.No.283/2004 for permanent injunction simplicitor and also I.A.No.346/2004 for temporary injunction; but, no interim orders have been passed; that under the circumstances, there was no impediment for the Municipality for taking delivery of possession; that the same was in order, and hence, the writ petition has got to be dismissed.

7.After hearing both sides, this Court is of the considered opinion that the writ petition itself has got to be disposed of in the following manner.

8.It is not in controversy that the property measuring 3.60 acres, was originally leased out to the father of the petitioner in 1967. It was extended till 1990. Originally, a suit was filed by the original lessee in O.S.No.104/91 for permanent injunction simplicitor, and subsequently, on his death, the legal representatives had not pressed the suit. Then, the petitioner filed O.S.No.283/2004 for permanent injunction along with an application in I.A.No.346/2004 for temporary injunction. Admittedly, both the suit and the temporary injunction application are yet pending before the District Munsif's Court, Vaniyambadi. Now, the impugned notice came to be served on the petitioner. There was no impediment for the petitioner to bring the same to the notice of that Court and get necessary orders; but, he has knocked the doors of the writ jurisdiction of this

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Court. While there is an effective and efficacious alternative remedy that is available, no question of knocking the doors of the writ jurisdiction would arise. It is also brought to the notice of the Court that the petitioner has filed a suit in O.S.No.283/2004; that the parties in that suit are the same, and the same is also pending. Under the circumstances, no question of granting the relief as one asked for by the petitioner in this writ petition, would arise. However, there is no impediment for the petitioner to approach the Court where the suit is pending, for necessary relief, if so advised. With this observation, this writ petition is disposed of. No costs. Consequently, connected WPMP is closed.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

nsv/

To:

1. The Commissioner
The Commissioner of Municipal
Administration
Chepauk, Chennai 600 005.

2. The Commissioner,
The Vaniyambadi Municipality
New Town, Vaniyambadi 635 751.

3.The Government Pleader
High Court, Madras.

+ 1 cc to Mr.K.R.Tamizhmani Advocate SR.NO.54620
+ 1 cc to MR.S.Gnaneswaran Advocate SR.NO.54635

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